

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ROGER WAHL)	MB Docket No. 21-401
)	
WQZS(FM), Meyersdale, PA)	Facility ID No. 57424
)	

ORDER TERMINATING PROCEEDING

Issued: August 2, 2022**Released: August 2, 2022**

1. This order addresses a motion to dismiss the above-captioned proceeding filed by the FCC's Enforcement Bureau on May 31, 2022. The Bureau argues that by failing to participate as ordered, Roger Wahl, licensee of WQZS(FM), Meyersdale, Pennsylvania, has effectively waived his right to a hearing. In the alternative, the Bureau seeks to compel Mr. Wahl to respond to outstanding discovery requests.¹ For the reasons detailed below, the Presiding Judge agrees that this proceeding should be terminated.

2. Roger Wahl, the sole licensee of WQZS(FM), pleaded guilty on July 8, 2020, to the felony of criminal use of a communication facility as well as the related misdemeanors of recklessly endangering another person, unlawful dissemination of an intimate image, and tampering with evidence. He also pleaded guilty at that time to invasion of privacy, but, after learning that would require registration as a sex offender, withdrew that plea and on November 16, 2020, pleaded guilty to identity theft. The basis for the criminal charges was that he had surreptitiously taken nude photos of a woman inside her home using a concealed camera he installed in her bathroom. He also impersonated the woman on a dating website, sent the nude photos he had taken with the hidden camera to at least one man who he encountered through that website, and solicited that man to have sexual relations with the woman without her consent. Upon learning that the Pennsylvania State Police were investigating the incident, Mr. Wahl deleted the photos from his phone and removed the communications he had made via the online dating site. He was sentenced to probation and electronic monitoring, and was ordered to pay a fine and the costs of his prosecution and supervision.²

3. Mr. Wahl, who is not an attorney, has chosen to represent himself in this hearing rather than retain counsel. For that reason, the Presiding Judge has repeatedly excused procedural deficiencies and has taken pains to explain to Mr. Wahl his responsibilities to respond fully to the Enforcement Bureau's discovery requests and to orders issued by the Presiding Judge. Problems with Mr. Wahl's self-representation began immediately, as he failed to file his Notice of Appearance in the Commission's Electronic Comment Filing System (ECFS), as specified in the *Wahl HDO*, and did not properly serve the

¹ Enforcement Bureau's Motion to Dismiss for Failure to Participate and Waiver of Hearing, or, in the Alternative, Motion to Compel a Response to the Enforcement Bureau's Outstanding Discovery Requests, MB Docket No. 21-401 (filed May 31, 2022) (EB Motion to Dismiss).

² *Roger Wahl*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, MB Docket No. 21-401, DA 21-1305 (MB Oct. 19, 2021) (*Wahl HDO*) at paras. 3-5.

Presiding Judge, as required by the Commission's rules.³ When the Notice of Appearance did not appear in ECFS by the due date, the Presiding Judge, on December 1, 2021, terminated the hearing pursuant to section 1.92 of the Commission's rules, 47 CFR § 1.92.⁴ The next day, however, upon learning that a timely appearance had been sent to the Enforcement Bureau via certified mail, she rescinded that termination order.⁵ On December 10, 2021, the Presiding Judge released the *Initial Case Order* in this proceeding, which indicated that a virtual status conference was to take place on January 13, 2022.⁶ A week before that conference was to occur, a representative from the Presiding Judge's office contacted Mr. Wahl seeking to make arrangements for him to connect to the virtual conference but he did not respond. Mr. Wahl was contacted again on January 10. That time he did respond and indicated that he would not be available to attend due to a pre-planned medical procedure. The Presiding Judge cancelled that conference and rescheduled it for March 8, 2022.⁷ The rescheduling order directed Mr. Wahl to file a proposed case schedule and other preliminary information, which he failed to do, and, because he is not represented by counsel, the order explained the Commission's *ex parte* rules with respect to restricted proceedings such as this one. The order also provided guidance regarding how to file pleadings and serve the Enforcement Bureau and the Presiding Judge.⁸

4. The initial status conference took place on March 8, 2022, and, on March 10, the Presiding Judge issued an order summarizing that conference.⁹ In addition to memorializing the hearing schedule, that order again explained the *ex parte* rules and applicable filing and service procedures, and reiterated that failure to adhere to hearing regulations and procedures, including deadlines, could lead to dismissal of the proceeding.¹⁰ The Enforcement Bureau served a request for documents on March 14, 2022, with a response from Mr. Wahl due by March 24.¹¹ When he did not file by that date, the Enforcement Bureau contacted him and learned that he had attempted to upload documents into the FCC's Electronic Comment Filing System (ECFS) but received an error message. He also indicated that he had emailed those documents to the Enforcement Bureau.¹² Finding the emailed response to the document request lacking, the Bureau, on April 1, 2022, filed a motion to compel Mr. Wahl to provide a more complete response. On April 5, the Presiding Judge issued an order that extended the due date for

³ See *id.* at para. 23; 47 CFR § 1.210 (all pleadings in a hearing proceeding are to be filed in ECFS with a courtesy copy contemporaneously provided to the presiding officer).

⁴ *Roger Wahl*, Termination Order, MB Docket No. 21-401, 21M-14 (ALJ Dec. 1, 2021).

⁵ *Roger Wahl*, Rescission of Termination Order, MB Docket No. 21-401, 21M-15 (ALJ Dec. 2, 2021).

⁶ *Roger Wahl*, Initial Case Order, MB Docket No. 21-401, 21M-17 (ALJ Dec. 10, 2021).

⁷ *Roger Wahl*, Order, MB Docket No. 21-401, 22M-01 (ALJ Jan. 11, 2022) (*January 11 Order*); *Roger Wahl*, Order Rescheduling Status Conference, MB Docket No. 21-401, 22M-02 (ALJ Jan. 27, 2022) (*Order Rescheduling Status Conference*).

⁸ *Order Rescheduling Status Conference* at paras. 2-3. After that order was released but before the initial status conference took place, Mr. Wahl emailed to one of the Presiding Judge's staff members letters of support from the local community, which that staff member placed into the official record of this proceeding via ECFS.

⁹ *Roger Wahl*, Order Summarizing Initial Status Conference, MB Docket No. 21-401, 22M-05 (ALJ Mar. 10, 2022) (*Order Summarizing Initial Conference*).

¹⁰ *Id.* at para. 3.

¹¹ Enforcement Bureau's First Request for Production of Documents and Things to Roger Wahl, MB Docket No. 21-401 (filed Mar. 14, 2022).

¹² Enforcement Bureau's Leave to File Corrected Motion to Compel Roger Wahl's Response to the Enforcement Bureau's First Document Requests, MB Docket No. 21-401 (filed Apr. 1, 2022) (EB Corrected Motion to Compel Documents) at Attachment A, Exhibit B.

Mr. Wahl to respond to the motion to compel until April 14.¹³ The Presiding Judge advised Mr. Wahl to contact ECFS Help as instructed on the ECFS webpage, and directed him to upload the documents that he had already provided the Bureau by April 8. He was ordered to complete service by contemporaneously emailing the documents to the Enforcement Bureau, the Presiding Judge, and her Special Counsel.¹⁴ When Mr. Wahl took none of the actions required of him by the *April 5 Order*, the Presiding Judge issued an order on April 20, 2022, granting the Enforcement Bureau's motion to compel more complete responses to its document request, providing Mr. Wahl several weeks to do so, and again ordered that he upload into ECFS the documents he had previously submitted and that he email them to the Enforcement Bureau, the Presiding Judge and her Special Counsel by May 6.¹⁵ To date, despite twice being ordered to do so, Mr. Wahl has neither uploaded the documents into ECFS nor emailed them as directed. Nor has Mr. Wahl responded more fully to the Bureau's first document requests as ordered.¹⁶ The Enforcement Bureau served a second set of document requests and a second set of interrogatories to Mr. Wahl on May 11, 2022.¹⁷ Mr. Wahl responded to the interrogatories on May 18, 2022, but did not respond to the document requests.¹⁸

5. The *Discovery Order* of April 29 also granted a separate motion filed by the Enforcement Bureau to compel more complete answers to the first set of interrogatories that it had sent to Mr. Wahl.¹⁹ Over the course of several paragraphs, the Presiding Judge laid out, in detail, an explanation of the interrogatories that needed to be answered and what the answer should include. Mr. Wahl filed updated interrogatory responses on May 5, 2022, that appear to attempt to follow the Presiding Judge's guidance, but still fall short.²⁰ For instance, in response to interrogatories 2 and 3, he indicates, "Documents will be provided." The Presiding Judge had specifically instructed, however, with respect to those very interrogatories, that "[i]t is not sufficient for Mr. Wahl to simply refer to documents without additional explanation."²¹ Moreover, he never provided the referenced documents. His other revised responses similarly fail to follow the clear instructions of the *Discovery Order*.

6. In light of these difficulties, the Enforcement Bureau on May 31, 2022, asked that the Presiding Judge either dismiss this hearing proceeding or compel a response to the outstanding discovery requests. The Bureau contends that "Mr. Wahl's continued lack of responsiveness and repeated failures to provide substantive and complete responses to the Bureau's continued attempts at discovery, and his apparent disregard for the Commission's rules, procedural deadlines, and the Presiding Judge's orders, plainly amounts to a waiver of this hearing."²² The Enforcement Bureau observes that the Presiding

¹³ *Roger Wahl*, Order, MB Docket No. 21-401, 22M-09 (ALJ Apr. 5, 2022) (*April 5 Order*) at paras. 2-3, 6.

¹⁴ *April 5 Order* at paras. 2 and 5. Pursuant to section 1.210 of the Commission's rules, 47 CFR § 1.210, filings in a hearing proceeding are to be entered into ECFS. *See also April 5 Order* at para. 2 ("Documents in a hearing proceeding must be entered into ECFS in order to be considered filed").

¹⁵ *Roger Wahl*, Discovery Order, MB Docket No. 21-401, FCC 22M-12 (ALJ Apr. 29, 2022) (*Discovery Order*).

¹⁶ *Id.* at paras. 8 and 18.

¹⁷ Enforcement Bureau's Second Request for Production of Documents and Things to Roger Wahl, MB Docket No. 21-401 (filed May 11, 2022); Enforcement Bureau's Second Set of Interrogatories to Roger Wahl, MB Docket No. 21-401 (filed May 11, 2022).

¹⁸ *Roger Wahl*, Enforcement bureau's second set of interrogatories, MB Docket No. 21-401 (filed May 18, 2022).

¹⁹ *See* Enforcement Bureau's Motion to Compel Roger Wahl's Complete Response to the Enforcement Bureau's First Set of Interrogatories, MB Docket No. 21-401 (filed Apr. 4, 2022).

²⁰ *Roger Wahl*, Interrogatories, MB Docket No. 21-401 (filed May 5, 2022).

²¹ *Discovery Order* at para. 10.

²² EB Motion to Dismiss at 1-2.

Judge has repeatedly told Mr. Wahl that failure to follow the Commission's rules and to meet deadlines could cause her to dismiss this case, which would lead to revocation of Mr. Wahl's license.²³ It submits that despite several concessions from the Presiding Judge, Mr. Wahl has failed to participate in this proceeding on multiple occasions. As a result, the Bureau argues, Mr. Wahl has waived his right to a hearing under section 1.92(a) of the Commission's rules, 47 CFR § 1.92(a).²⁴

7. The Presiding Judge has provided Mr. Wahl significant deference in this matter due to his choice to proceed without counsel. It has become clear, however, that Mr. Wahl is not participating in this proceeding at the level necessary to render it a meaningful exercise of the opportunity for a hearing that has been afforded him, much less of the government's time and resources. His repeated failure to produce required documents without explanation is particularly concerning. The Presiding Judge informed Mr. Wahl several times that lack of filing could cause him to lose his license.²⁵ Notably, on two occasions he was ordered to file in ECFS and email to the Enforcement Bureau, the Presiding Judge, and her Special Counsel documents that he had already emailed to the Enforcement Bureau. He ignored those orders, despite being cautioned by the Presiding Judge that "[f]ailure to file documents in accordance with the Commission's rules can have negative consequences, up to and including termination of the proceeding and, in turn, license revocation."²⁶ In the *Discovery Order* of April 29, the Presiding Judge could not have been clearer in warning Mr. Wahl that he was in danger of losing his license, stating, "Mr. Wahl is hereby put on notice that any additional failure to satisfy a deadline or follow an order of the Presiding Judge could provide a basis for dismissal of this proceeding, which, in turn, will lead to revocation of his FCC license."²⁷ Mr. Wahl was provided "one more opportunity" to comply with the order that he file and email the previously-provided documents but did not do so.²⁸ To date, he has filed no substantive documents in this proceeding.

8. In sum, Mr. Wahl has, to this point, missed the following deadlines:²⁹

- December 30, 2021: Mr. Wahl did not respond to the Bureau's Request for Admissions.³⁰
- March 4, 2022: Mr. Wahl did not submit a proposed case schedule or other relevant materials, as he was directed to do by the January 27th *Order Rescheduling Status Conference*.

²³ *Id.* at 2-3.

²⁴ *Id.* at 3-6.

²⁵ *January 11 Order* at para. 3 ("Dates and deadlines established throughout this proceeding are not suggestions. While the Commission's rules include procedures for requesting extensions of time if circumstances warrant, a party who does not make such a request and simply ignores a deadline is in significant danger of being held in default"); Transcript of Initial Status Conference, Tr. 7:16-19 (Mar. 8, 2022) ("This case is very formal; that's how these hearings work. And failure to follow the rules could result in dismissal of the case and revocation of your license"); *Order Summarizing Initial Conference* at para. 3 ("Finally, the Presiding Judge emphasized that failure to adhere to the Commission's hearing regulations and procedures, including filing deadlines, could lead to dismissal of this proceeding with prejudice").

²⁶ *April 5 Order* at para. 2.

²⁷ *Discovery Order* at para. 7.

²⁸ *Id.*

²⁹ See EB Motion to Dismiss at 4-5.

³⁰ See Enforcement Bureau's Request for Admissions to Roger Wahl, MB Docket No. 21-401 (filed Dec. 20, 2021).

- April 8, 2022: Mr. Wahl did not upload into ECFS the documents in response to the Bureau’s first document request that he previously sent the Bureau, as directed by the *April 5 Order*, and failed to email copies to the Presiding Judge, her Special Counsel, and the Bureau as ordered.
- April 11, 2022: Mr. Wahl did not respond to the Bureau’s motion to compel a more complete response to its first interrogatories.
- April 14, 2022: Mr. Wahl did not respond to the Bureau’s motion to compel a more complete response to its first document request as directed by the *April 5 Order*.
- May 6, 2022: Mr. Wahl again failed to upload the documents he previously sent the Bureau into ECFS, and failed to email copies to the Presiding Judge, her Special Counsel, and the Bureau, as directed by the *Discovery Order* of April 29.
- May 23, 2022: Mr. Wahl did not file a response to the Bureau’s second document request.
- May 25, 2022: Mr. Wahl did not submit additional information regarding the Bureau’s first document request, as directed by the *Discovery Order*.
- June 6, 2022: Mr. Wahl did not file a response to the Enforcement Bureau’s May 31 Motion to Dismiss.
- July 18, 2022: Mr. Wahl did not respond to the Bureau’s motion for a status conference.³¹

9. It is well-settled that a party to a Commission proceeding who chooses to self-represent bears the responsibility to become familiar with the Commission’s rules and procedures.³² In the *Discovery Order*, the Presiding Judge cited five previous occasions on which she had reminded Mr. Wahl that parties are expected to abide by Part 1 of the Commission’s rules. He was also cautioned, as he had been during the initial status conference in this proceeding, that, as a *pro se* litigant, he bears the responsibility to educate himself regarding FCC procedures.³³ Nonetheless, he has continued to pay very limited attention to the Enforcement Bureau’s pleadings and the Presiding Judge’s orders. As the Presiding Judge stated in the *Discovery Order*, “[t]his proceeding will not continue on this trajectory.”³⁴ Despite being initiated more than nine months ago, this matter has not progressed. The Commission has made clear that “[w]e cannot excuse the disruption of our administrative processes because a party, who undertakes to act as its own counsel, is unfamiliar with our rules and procedures; and no such disruption will be tolerated.”³⁵

10. Section 1.91(c) of the Commission’s rules, 47 CFR § 1.91(c), directs a respondent in a

³¹ Enforcement Bureau’s Motion for a Status Conference, MB Docket No. 21-401 (filed July 12, 2022) (EB Motion for Conference).

³² See, e.g., *Silver Beehive Telephone Co.*, 34 F.C.C.2d 738, 739 (1972) (*Silver Beehive*) (“Where a party elects to act without counsel, it must assume the burden of becoming acquainted with, and conforming to the requirements of, our rules”); *Full Minority Media*, 2 FCC Rcd 1732, 1733 (Rev. Bd. 1987) (“Although we give some equitable latitude to a pro se applicant, a party’s choice to proceed without counsel does not relieve its ordinary burden of becoming fairly acquainted with, and generally conforming to, the Commission’s basic procedural rules”); *Frank Rackley, Jr.*, 35 FCC Rcd 6864, 6867 (2020) (“It is well settled that parties acting *pro se* assume the responsibility of complying with the Rules”).

³³ *Discovery Order* at para. 6.

³⁴ *Id.* at para. 7.

³⁵ *Silver Beehive* at 739-40.

revocation proceeding to file a written appearance stating that they will present evidence and appear before the presiding officer as required. Pursuant to section 1.92(a)(2) of the Commission's rules, 47 CFR § 1.92(a)(2), a hearing is deemed waived if the respondent files an appearance but in fact fails to present evidence. At the outset of this hearing proceeding, Mr. Wahl indicated in his Notice of Appearance that, "I, Roger Wahl, appear in the above referenced matter and intend to present evidence on the matters specified in the said order."³⁶ He has not lived up to that commitment, however. The Presiding Judge has been made aware of health setbacks that Mr. Wahl recently experienced and for that reason has not been as timely as she perhaps could have been in responding to the EB Motion to Dismiss. It appears that Mr. Wahl has recovered sufficiently to resume his radio broadcasts, but has made no filings in response to outstanding discovery requests, motions, and orders.³⁷ In any event, there is no evidence that medical issues were the cause of Mr. Wahl's failures in this case or that he would have acquitted himself any better had he been in robust physical health. Mr. Wahl has held the FCC license for WQZS(FM) for 30 years. He is therefore well-acquainted with the responsibilities of a radio licensee and should be cognizant of the gravity of having one's license designated for a revocation hearing. He has chosen, however, to participate in this hearing only selectively. The Presiding Judge takes no pleasure in causing a Commission license to be revoked without a full airing of substantive issues, but it is her duty to administer hearings "as will best conduce to the proper dispatch of business and the ends of justice."³⁸ Given the direction this hearing has taken, as illustrated herein, the only logical course left to her is to find that Mr. Wahl has waived his opportunity to participate and, as a result, to terminate this proceeding.

11. Accordingly, **IT IS ORDERED** that, pursuant to section 1.92(a) of the Commission's rules, 47 CFR § 1.92(a), and in light of the events and circumstances identified herein, the hearing in the above-captioned matter **HAS BEEN WAIVED** and this hearing proceeding **IS TERMINATED**.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.92(c) of the Commission's rules, 47 CFR § 1.92(c), and paragraph 30 of the *Wahl HDO*, this case **IS CERTIFIED TO THE COMMISSION** for further disposition consistent with this Order.

13. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Motion to Dismiss for Failure to Participate and Waiver of Hearing, or in the Alternative Motion to Compel a Response to the Enforcement Bureau's Outstanding Discovery Requests, filed on May 31, 2022, **IS GRANTED** to the extent indicated herein.

14. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Motion for a Status Conference, filed July 12, 2022, **IS DISMISSED AS MOOT**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge

³⁶ Roger Wahl, Notice of Appearance, MB Docket No. 21-401 (filed Nov. 11, 2021).

³⁷ EB Motion for Conference at 2. Mr. Wahl's daughter informed the Presiding Judge and the Enforcement Bureau on July 12 that Mr. Wahl has prerecorded some radio shows as he continues his outpatient recovery.

³⁸ 47 CFR § 1.243(n).